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8 **IN THE UNITED STATES DISTRICT COURT**
9 **FOR THE EASTERN DISTRICT OF CALIFORNIA**
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11 UNITED STATES OF AMERICA,

No. CR S-99-0294-GEB-CMK
CIV S-09-1824-GEB-CMK

12 Respondent,

13 vs.

FINDINGS AND RECOMMENDATIONS

14 DOROTHY HENDERSON,

15 Movant.
16 _____/

17 Movant, a federal prisoner proceeding pro se, brings this motion to correct or set
18 aside a criminal judgment pursuant to 28 U.S.C. § 2255. On July 1, 2009, Movant filed her
19 second motion (Doc. 169)¹ and a copy of her application to for authorization to file a second or
20 successive § 2255 motion (Doc. 170), which was filed in the Ninth Circuit Court of Appeals.

21 On November 17, 2009, the Ninth Circuit denied her application (Doc. 172).²
22 Before a second or successive petition potentially permissible under § 2244(b)(2) can be filed,
23 _____

24 ¹ Movant's first motion was filed on October 2, 2003 (Doc 134). This motion was
denied on January 26, 2007 (Doc. 165).

25 ² The Ninth Circuit's denial of her application is sufficient to terminate the copy of
26 the application filed with this court. The Clerk of the Court should therefore be directed to
terminate Doc. 170 as a pending motion.

1 the petitioner must first obtain leave of the Court of Appeals. See 28 U.S.C. §§ 2244(b)(3),
2 2255(h). In the absence of proper authorization from the Court of Appeals, the district court
3 lacks jurisdiction to consider a second or successive petition and must dismiss it. See Cooper v.
4 Calderon, 274 F.3d 1270 (9th Cir. 2001) (per curiam).

5 Here, Movant was denied authorization to file her current motion. This court
6 therefore has no jurisdiction to consider the motion, and the motion should be denied as filed
7 without proper authorization.

8 In addition, a review of the docket in this matter reveals an old motion which has
9 not been terminated. Petitioner filed a motion for entry of judgment in June 2005 (Doc. 148)
10 which is still showing as a pending motion. Petitioner was attempting to obtain a ruling on the
11 previous § 2255 motion. That ruling was issued in January 2007 (Doc. 165) rendering the old
12 motion for entry of judgment moot.

13 Based on the foregoing, the undersigned recommends that:

14 1. The motion to vacate, set aside or correct sentence under 28 U.S.C. § 2255
15 (Doc. 169) be denied as a second or successive motion filed without proper authorization;

16 2. The Clerk of the Court be directed to terminate the application for
17 authorization to file a second or successive application for relief (Doc. 170) as a pending motion
18 pursuant to the Ninth Circuit's denial; and

19 3. The Clerk of the Court be directed to terminate the motion for entry of
20 judgment (Doc. 148) as moot.

21 These findings and recommendations are submitted to the United States District
22 Judge assigned to the case, pursuant to the provisions of 28 U.S.C. § 636(b)(1). Within 20 days
23 after being served with these findings and recommendations, any party may file written

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1 objections with the court. The document should be captioned "Objections to Magistrate Judge's
2 Findings and Recommendations." Failure to file objections within the specified time may waive
3 the right to appeal. See Martinez v. Ylst, 951 F.2d 1153 (9th Cir. 1991).

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5 DATED: December 4, 2009

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7 **CRAIG M. KELLISON**
8 UNITED STATES MAGISTRATE JUDGE
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